

§ 2.35

compliance with the requirements of § 2.39;

(x) In an application under section 1(a) of the Act, the mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified or, in an application under section 1(b) of the Act, the intended mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified.

(2) If more than one item of goods or services is specified in the application, the dates of use required in paragraph (a)(1)(vii) of this section need be for only one of the items specified, provided the particular item to which the dates apply is designated.

(3) The word *commerce* as used throughout this part means commerce which may lawfully be regulated by Congress, as specified in section 45 of the Act.

(b)(1) In an application under section 1(a) of the Act, the application must include averments to the effect that the applicant is believed to be the owner of the mark sought to be registered; that the mark is in use in commerce, specifying the nature of such commerce; that no other entity, to the best of the declarant's knowledge and belief, has the right to use such mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other entity, to cause confusion, or to cause mistake, or to deceive; that the specimens or facsimiles show the mark as used on or in connection with the goods or services; and that the facts set forth in the application are true; or

(2) In an application under section 1(b) or 44 of the Act, the application must include averments to the effect that the applicant is believed to be the owner of the mark sought to be registered; that the applicant has a bona fide intention to use the mark in commerce on or in connection with the specified goods or services; that no other entity, to the best of the declarant's knowledge and belief, has the right to use such mark in commerce, either in the identical form or in such near resemblance as to be likely, when

37 CFR Ch. I (7-1-98 Edition)

applied to the goods or services of such other entity, to cause confusion, or to cause mistake, or to deceive; and that the facts set forth in the application are true.

(c) For an application for the registration of a mark for goods or services falling within multiple classes, see § 2.86.

(d) An applicant may not file under both sections 1(a) and 1(b) of the Act in a single application, nor may an applicant in an application under section 1(a) of the Act amend that application to seek registration under section 1(b) of the Act.

[51 FR 28709, Aug. 11, 1986, as amended at 54 FR 37589, Sept. 11, 1989; 54 FR 46231, Nov. 2, 1989]

§ 2.35 Description of mark.

A description of the mark, which must be acceptable to the Examiner of Trademarks, may be included in the application, and must be included if required by the examiner. If the mark is displayed in color or a color combination, the colors should be described in the application.

§ 2.36 Identification of prior registrations.

Prior registrations of the same or similar marks owned by the applicant should be identified in the application.

§ 2.37 Authorization for representation; U.S. representative.

The authorization of a qualified person to represent applicant (§ 2.17(b)) and the designation of a domestic representative (§ 2.24) may be included as a paragraph or paragraphs in the application.

[41 FR 758, Jan. 5, 1976]

§ 2.38 Use by predecessor or by related companies.

(a) If the first use, the date of which is required by paragraph (a)(1)(vii) of § 2.33, was by a predecessor in title, or by a related company (sections 5 and 45 of the Act), and such use inures to the benefit of the applicant, the date of such first use may be asserted with a statement that such first use was by the predecessor in title or by the related company as the case may be.